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## IRS Issues Ruling on REIT Qualifying Income

The IRS issued Private Letter Ruling 201904005 (<https://www.irs.gov/pub/irs-wd/201904005.pdf>) in which it found that pursuant to Section 856(c)(5)(J)(ii), a REIT's proportionate share of income from payments received from a city in exchange for restricting certain apartment units to below-market rental rates during the stated taxable year was considered qualifying income under Sections 856(c)(2) and 856(c)(3). (Section references are to the Internal Revenue Code of 1986, as amended.)

## IRS Issues Ruling Defining Religious Order; Exemption From FUTA

The IRS issued Private Letter Ruling 201904008 (<https://www.irs.gov/pub/irs-wd/201904008.pdf>) in which it determined that a Section 501(c)(3) religious residential community organization was considered a religious order and its members were considered members of such order pursuant to the requirements set forth in Revenue Procedure 91-20, by satisfying all but one of such requirements. (The Revenue Procedure sets forth the characteristics for determining whether an organization is a religious order and whether an individual is a member of a religious order.) The ruling notes that generally, the presence of all the characteristics set forth in the Revenue Procedure is determinative that the organization is a religious order. However, the ruling also notes that the absence of one or more of the other enumerated characteristics is not necessarily determinative in a particular case. The IRS further ruled that pursuant to Section 3306(c)(8), subsistence earned by members for services performed by them as members of the order was not subject to FUTA tax.

## CFC's Partners Required to Increase E&P Based on Income Inclusions

The U.S. Tax Court, in *Eaton Corporation and Subsidiaries*, 152 TC No. 2 (2019) (<https://www.ustaxcourt.gov/UstcInOp/OpinionViewer.aspx?ID=11903>), held that the upper-tier controlled foreign corporation (CFC) partners in a domestic partnership must increase their earnings and profits (E&P) according to Section 951(a) income inclusions of the partnership.

The opinion explains that under Section 951(a), CFC shareholders must include in gross income certain items regardless of whether distributions were made. Those items include subpart F income and the amount determined under Section 956 (relating to investment of earnings in United States property). In determining whether the upper-tier CFCs must increase their E&P to reflect the lower-tier CFC income inclusions, the court considered the interaction between Section 312, regarding domestic corporation E&P, and Section 964, a subpart F provision concerning the E&P of a foreign corporation. The Tax Court found that Section 964 incorporates the rules of Section 312 in language which states that, except as provided in Section 312(k)(4), the E&P of a foreign corporation should be determined according to rules substantially similar to those applicable to a domestic corporation and under regulations prescribed by the Secretary of the Treasury. The Tax Court further found that regulations promulgated under Section 964 apply as well as those promulgated under Section 312. The court found that the "all items includible in gross income under section 61 or corresponding provisions of prior revenue acts" language in Treasury Regulation Section 1.312-6(b) applied regarding E&P. The court found further support for its decision in Treasury Regulation Section 1.964-1(a)(1), which provides that E&P for a foreign corporation should be calculated substantially as if it were a domestic corporation.

The opinion concludes that CFCs compute their E&P in the same manner as a domestic corporation. Therefore, Eaton was required to include additional amounts in its consolidated

income since domestic corporations increase E&P by amounts included in gross income under Section 61, and a partner's gross income includes its distributive share of the partnership's income.

### **IRS Issues Form for Governments, Etc., to Report Fines, Etc., They Received**

The IRS has issued a new form, 2019 Form 1098-F (<https://www.irs.gov/pub/irs-pdf/f1098f.pdf>), and the instructions (<https://www.irs.gov/pub/irs-dft/i1098f--dft.pdf>) for that form. The new form is used to comply with a section of the 2017 Tax Cuts and Jobs Act (TCJA) that requires government and nongovernment entities to report amounts they receive from taxpayers for fines, penalties, etc. For amounts generally paid or incurred on or after Dec. 22, 2017, the TCJA provides that no deduction is allowed for any otherwise deductible amount paid or incurred (whether by suit, agreement or otherwise) to, or at the direction of, a government or specified nongovernmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law. An exception applies to payments that the taxpayer establishes are either restitution (including remediation of property) or amounts required to come into compliance with any law that was violated or involved in the investigation or inquiry. Government agencies (or entities treated as such) must report to the IRS and to the taxpayer the amount of each settlement agreement or order entered into where the aggregate amount required to be paid or incurred to or at the direction of the government is at least \$600 (or such other amount as may be specified by the IRS). The report must separately identify any amounts that are for restitution or remediation of property, or correction of noncompliance. The report must be made at the time the agreement is entered into.

### **IRS Issues Guidance on Exempt Organization Letter Request Processing, Deepening Search for Possible Links to Terrorism**

The IRS Tax Exempt and Government Entities division has provided interim guidance (TEGE-07-0219-0003) (<https://www.stradley.com/-/media/files/publications/2019/03/ofac.pdf?la=en&hash=13C1E313D6BE767FB861705E5C09EF8C>) for processing exempt organization determination letters so that it can better identify involvement in terrorism, noting the use of additional lists for name matches and working with the anti-terrorism coordinator to review all foreign grants and activities.

### **IRS Releases Audit Technique Guide on Foreclosures, Debt Cancellation**

The IRS has revised an earlier audit technique guide ([https://www.irs.gov/pub/irs-utl/real\\_estate\\_foreclosure\\_atg.pdf](https://www.irs.gov/pub/irs-utl/real_estate_foreclosure_atg.pdf)) for examining cases involving real estate foreclosures and cancellation of debt income.

### **IRS Releases Practice Unit on Self-Employment Tax and Partners**

The IRS has released a practice unit ([https://www.irs.gov/pub/irs-utl/pst\\_c\\_366\\_01\\_01\\_01.pdf](https://www.irs.gov/pub/irs-utl/pst_c_366_01_01_01.pdf)) on when an individual partner's distributive share of income is subject to self-employment tax, noting that the unit applies to all arrangements that are treated as partnerships for federal tax purposes.

### **IRS Releases Fact Sheet Outlining TCJA Changes**

The IRS has released a fact sheet (FS-2019-2) (<https://www.irs.gov/newsroom/be-tax-ready-understanding-tax-reform-changes-affecting-individuals-and-families>) outlining changes made by the TCJA, including changes affecting small-business taxpayers and changes to withholding, deductions, benefits for dependents, the alternative minimum tax and retirement plans.

### **NYSBA Issues Reports to Clarify and Simplify Business Interest Regulations and on Proposed Hybrid Regulations**

The New York State Bar Association Tax Section has submitted reports:

- on proposed Section 163(j) regulations (REG-106089-18) ([https://www.nysba.org/Sections/Tax/Tax\\_Section\\_Reports/Tax\\_Section\\_Reports\\_2019/1412\\_Report.html](https://www.nysba.org/Sections/Tax/Tax_Section_Reports/Tax_Section_Reports_2019/1412_Report.html)), making suggestions to clarify and, in some cases, simplify the regulations and
- highlighting significant issues under proposed regulations (REG-104352-18) on the treatment of hybrid transactions and arrangements under the TCJA rules ([https://www.nysba.org/Sections/Tax/Tax\\_Section\\_Reports/Tax\\_Section\\_Reports\\_2019/1411\\_Report.html](https://www.nysba.org/Sections/Tax/Tax_Section_Reports/Tax_Section_Reports_2019/1411_Report.html)), suggesting some changes to improve how the rules operate.

### **Delaware Amends Abandoned and Unclaimed Property Handbook**

The Delaware Department of Finance, Office of Unclaimed Property, has revised its handbook for reporting unclaimed property to the state of Delaware ([https://unclaimedproperty.delaware.gov/docs/Escheat%20Holder%20Reporting%20Handbook\\_Rewrite\\_022018.pdf](https://unclaimedproperty.delaware.gov/docs/Escheat%20Holder%20Reporting%20Handbook_Rewrite_022018.pdf)). The handbook covers topics such as what is unclaimed property; what is required to be reported; when does unclaimed property become reportable; and the unclaimed property reporting process, including identifying reportable properties, when to report and remit payments, performing holder's due diligence, preparing and submitting the unclaimed property report, and common reporting errors.

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